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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/760,179	01/16/2004	William V. Alcini	2001U-001640	8074

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EXAMINER
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SAN MARTIN, EDGARDO

ART UNIT	PAPER NUMBER
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2837

MAIL DATE	DELIVERY MODE
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04/02/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/760,179	<b>Applicant(s)</b> ALCINI ET AL.	
	<b>Examiner</b> Edgardo San Martin	<b>Art Unit</b> 2837	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 January 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1 – 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Olszok et al. (US 5,821,474) in view of Itoyama et al. (US 6,155,954).

With respect to claims 1, 6, 16 and 21, Olszok et al. teach a method and apparatus for controlling exhaust flow in an exhaust system for a non-conventional internal combustion power source exhibiting, during operation, larger ranges of acoustic frequency, flow rate or pressure in exhaust flow than found in conventional internal combustion power sources, or exhibiting discontinuities in exhaust gas flow during operation (Fig.1, Col.1, Lines 32 – 51), the method comprising placing a passive temperature resistant valve (Fig.1, Item 5) in a path of exhaust gas flow, the valve operative to at least partially alter a characteristic of the exhaust gas flow for the larger ranges, or a restriction of the exhaust gas flow whenever a discontinuity occurs (Fig.1, Col.1, Lines 11 – 31, Col.3, Lines 8 – 29 and Fig. 2, item 5.1; Col. 3, lines 45-49, 57-62).

However, Olszok et al. fail to specifically and explicitly disclose wherein the exhaust system is for a non-conventional internal combustion power source as claimed by the applicant.

On the other hand, Itoyama et al. teaches a hybrid internal combustion power source cutting off the fuel supply in intermittent or coasting operation (Col.6, Lines 16 – 21) as described by Olszok et al..

It would have been obvious to a person with ordinary skill in the art at the time of the invention was made to employ the Olszok et al. design because Olszok et al. desires the muffler's use in a hybrid vehicle (Col. 1, Lines 40-43) such as provided by Itoyama et al.

With respect to claims 2 and 17, Olszok et al. teach wherein the characteristic of the exhaust gas flow comprises at least one of flow restriction, flow reflection and flow direction (Fig.1, Col.1, Lines 11 – 31, and Col.3, Lines 8 – 29).

With respect to claims 3 - 5, 9 – 14 and 18 - 20, Olszok et al. teach wherein the passive, temperature resistant valve (Fig.1, Item 5) is placed nearer to a midpoint (Fig.1, at Item 5 or 13) of the exhaust system than to an endpoint (Fig.1, Item 7) thereof.

With respect to claims 7 and 22, Olszok et al. teach wherein the passive, temperature resistant valve increases restriction of exhaust gas flow whenever a discontinuous decrease in exhaust gas flow rate occurs (Fig. 2, item 5.1, Col. 3, lines 45-62, Col.1, Lines 11 – 31 and Col.3, Lines 8 – 29).

With respect to claims 8 and 23, Olszok et al. teach wherein the passive, temperature resistant valve (Fig.1, Item 5) restricts exhaust gas flow via a valve surface extending substantially perpendicular to a longitudinal axis of exhaust flow (Fig.1).

With respect to claims 15 and 24, Olszok et al. teach wherein the valve surface (Fig.1, Item 5) is positioned in a resonator (Fig.1, Item 25) having an inlet coupled to an interior conduit (Fig.1, Item 3.1) extending into the resonator (Fig.1, Item 25) and terminating in the resonator adjacent to the valve surface (Fig.1, Item 5).

### ***Response to Arguments***

2. Applicant's arguments filed on January 8, 2009 have been fully considered but they are not persuasive. The Examiner considers that the patents to Olszok et al. and Itoyama et al. teach the limitations described in the claims as discussed above.

In response to the argument for reopening prosecution, the Applicant cited MPEP 1214.04; however, the citation of the section was conveniently extracted and does not reflect the whole idea of the section. The Applicant completely ignored the rest of the paragraph from which such statement was extracted and the rest of the section for that matter. MPEP 1214.04 establishes, starting with the paragraph in issue:

“The examiner should never regard such a reversal as a challenge to make a new search to uncover other and better references. **This is particularly so where the application or ex parte reexamination proceeding has meanwhile been transferred or assigned to an examiner other than the one who rejected the claims leading to the appeal.** The second examiner should give full faith and credit to the prior examiner's search.

**If the examiner has specific knowledge of the existence of a particular reference or references which indicate nonpatentability of any of the appealed claims as to which the examiner was reversed, he or she should submit the matter to the Technology Center (TC) Director for authorization to reopen prosecution under 37 CFR 1.198 for the purpose of entering the new rejection. See MPEP § 1002.02(c) and MPEP § 1214.07. The TC Director's approval is placed on the action reopening prosecution."**

Based on the clear language of MPEP 1214.04, the Examiner and his co-signing supervisory colleagues did not ignore the section, but follow it essentially to the letter.

First of all, the decision of the board establishes that the Examiner was supposed to give patentable weight to the preamble of the independent claims because that was the issue being appealed. Second, the application didn't change from Examiner, and that is to what the language cited by the Applicant refers to, as the rest of the paragraph clarifies. Third, the Examiner had specific knowledge of a particular reference which indicates nonpatentability of the appealed claims, and the Examiner submitted the matter to the Technology Center Director, at the time, Janice A. Falcone, for authorization to reopen prosecution and enter the new rejection. The Examiner concludes that neither he nor his co-signing supervisory colleagues ignored the section, but it seems that it was the Applicant who ignored the clear language of MPEP Section 1214.04, and inadequately accused the Examiner and his co-signing supervisory colleagues of doing so.

Regarding the arguments for the rejection under 35 USC 103, the Examiner considers that any person with ordinary skill in the art would acknowledge that Olzok et

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al. valve is, in fact, a passive valve, based on the common use and knowledge of a passive valve and an active valve. The common use and knowledge of an active valve is a valve that is controlled manually and/or by a motor to open and closed based on a control signal. On the other hand, the common use and knowledge of a passive valve is a valve that is controlled to open and close by a change in pressure in the system where the valve is placed, the valve is usually biased to an open or closed position by the use of a spring or a any other resilient mechanism, which is the case of the Olzok et al. valve presented in Figure 1.

Even if the Olzok et al. valve is a “semi-active” valve, the section of Olzok et al. use to reject the claims is mostly shown in Figure 1, which clearly teach a passive valve. Additionally, the use of the Itoyama et al. patent is to further define the type of engine that Olzok et al. discussed as having discontinuities in its operation. Itoyama et al. teach a hybrid engine, which is clearly a non-conventional engine as described in the current specification paragraph [0013], having discontinuities in its operation.

### ***Conclusion***

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

### ***Contact Information***

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edgardo San Martin whose telephone number is (571)272-2074. The examiner can normally be reached on 8:00AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Walter Benson can be reached on (571) 272-2227. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Edgardo San Martin/

Edgardo San Martín  
Primary Examiner  
Art Unit 2837  
Class 181  
April 3, 2009